

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SECURITIES AND EXCHANGE COMMISSION :
Plaintiff, : Case No: 07-CV-11387 (DLC)
v. :
BRIAN N. LINES, et al., : DECLARATION OF MARIO
Defendants. : AIETA IN SUPPORT OF
: WAYNE E. WEW'S MOTION
: FOR SUMMARY JUDGMENT
-----x

MARIO AIETA, declares under penalty of perjury:

1. I am a partner in Satterlee, Stephens, Burke & Burke LLP, counsel to Defendant Wayne E. Wew (“Wew”) (sued herein under his former name “Wayne Wile”). I am familiar with these proceedings and the parties’ submissions herein, and I submit this declaration in support of Wew’s motion for summary judgment on all of the claims asserted against him by The Securities and Exchange Commission.

2. Attached to this declaration as Exhibit A are excerpts from the transcript of the deposition given by James Cangiano in this action on December 15 and 16, 2009.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed: January 25, 2010

/s/ Mario Aieta

MARIO AIETA

EXHIBIT A

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 07-CV-11387 (JUDGE COLS)

4 SECURITIES AND EXCHANGE COMMISSION

5 Plaintiff,

6 vs.

7 BRIAN N. LINES, et al.,

8 Defendants.
-----X

9
10 VOLUME I

11
12 VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO

13
14 200 South Biscayne Boulevard

15
16 Suite 3900

17
18 Miami, Florida

19
20 Tuesday, December 15, 2009

21
22 9:15 a.m.

23
24 Job #169836

25 Pages 1-297

Reported By: Carol Williams

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CONDUCTED ON TUESDAY, DECEMBER 15, 2009

Page 2

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

Page 3

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7 JEFFREY HARRIS, ESQUIRE
8 DEREK T. HO, ESQUIRE
9 Kellogg, Huber, Hansen, Todd, Evans &
Figel, PLLC
10 1615 M Street, N.W., Suite 400
Washington, D.C. 20036

11 Also Present: David Marcus

12 Scott Quinn, Videographer

13 I N D E X

14 WITNESS Direct
15 James M. Cangiano
16 By Mr. Figel 6, 140

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CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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1 THE VIDEOGRAPHER: Here begins
2 videotape number 1 in the deposition of James
3 Cangiano in the matter of Securities and
4 Exchange Commission, plaintiff, versus Brian
5 N. Lines, et al., defendants in the United
6 States District Court, Southern District of
7 New York.

8 Today's date is December 15, 2009. The
9 time is 9:15 a.m. I am Scott Quinn, the
10 video operator. The video deposition is
11 taking place at K&L Gates in Miami, Florida.

12 Would counsel please voice identify
13 themselves and state whom you represent.

14 MR. CHRETIEN: Justin Chretien on
15 behalf of plaintiff Securities and Exchange
16 Commission.

17 MR. FIGEL: Reid Figel, Derek Ho, and
18 Jeffrey Harris representing the LOM entities.

19 MR. CRIMMINS: Steve Crimmins from K&L
20 Gates representing Scott Lines.

21 MR. SMITH: Philip Smith from Patton
22 Boggs representing defendant Brian Lines.

23 MR. BLOOM: Leonard Bloom and William
24 Nortman from Akerman Senterfitt representing
25 defendant Anthony Wile.

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CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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1 Q. Why not?

2 A. I don't think it was material to my
3 finding. We knew that there was present -- we
4 knew that short sellers were present, or at
5 least, you know, Mr. Peever and Mr. Lines thought
6 so.

7 Q. Which transaction are we talking about
8 now?

9 A. Oh, I don't know. There is a whole
10 bunch of short sale transaction.

11 Q. Are we talking about SHEP or Sedona?

12 A. Oh, I'm sorry. I got -- I got lost
13 there for a minute. I apologize.

14 Q. Bad question. I want to make sure the
15 record is clear.

16 A. It's getting to be 4:30. My brain
17 quits functions at 10 after 4:00. I'm sorry.

18 MR. CHRETIEN: Do you want him to
19 repeat the question?

20 THE WITNESS: Yeah.

21 Q. Did you do any investigation to
22 determine whether there was any illegal short
23 selling in connection with the transactions in
24 SHEP? And then the next question was, after you
25 said no, why not?

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CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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1 A. Okay. And I think I answered it really
2 wasn't integral to my opinion or something like
3 that.

4 Q. And why didn't -- why didn't you
5 conduct any investigation into the short selling
6 in Sedona?

7 A. I just didn't feel it was material in
8 my opinion. As a matter of fact, on the
9 contrary. It -- to me, it kind of enforced my
10 opinion that this, in fact, was a pump and dump.

11 Q. You didn't think it would be --
12 withdrawn.

13 Is it fair to say that short selling
14 can have the effect of depressing the reported
15 price of a stock?

16 A. It can, yes.

17 Q. And wouldn't it be important to your
18 opinion to know whether any of the price
19 movements that you claim existed as a result of
20 the promotional activities of the defendants in
21 this case were impacted by the presence of short
22 selling?

23 A. Are you talking Sedona, SHEP, or both?

24 Q. Both.

25 A. No. As a matter of fact, it would be

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1
CONDUCTED ON TUESDAY, DECEMBER 15, 2009

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1 exactly the opposite of that. I think the
2 presence of short sellers fostered my belief that
3 they were -- as I said, they are pretty smart
4 people and they know where to hone in and where
5 they can make some money in these kinds of deals.

6 Q. So the presence of short sellers was a
7 fact you relied on to support your opinion that
8 there was what you call a pump and dump?

9 A. I think so, yeah. I think it's an
10 indication that, in addition to me, some savvy
11 traders knew what was going on.

12 Q. Do people take short positions for
13 reasons other than their belief that there is a
14 pump and dump?

15 A. Sure.

16 Q. What might some of those reasons be?

17 A. They think the stock is going down.
18 They don't feel that the issuer is going to meet
19 their earnings. It could be a million different
20 negative things about the company.

21 Q. So how do you determine, when you see
22 the presence of short selling, whether the
23 motivation for the short sellers is their belief
24 that there is a pump and dump as opposed to some
25 of the fundamentals about the company or the

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 1
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1 market, established the bid and offer,
2 established both sides of the market, by the way,
3 as the \$8 bidder and the 9.50 offerer, and that
4 as a consequence of those quotes, verified by
5 Wayne Wile's transaction, the \$9.50 offering was
6 lifted.

7 MR. FIGEL: All right. I think,
8 unfortunately, we are out of time for today.

9 MR. CHRETIEN: Come back in the
10 morning.

11 THE VIDEOGRAPHER: Going off the
12 record. The time is 5:58.

13 (Whereupon, deposition adjourned.)

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 07-CV-11387 (JUDGE COLS)

4 SECURITIES AND EXCHANGE COMMISSION

5 Plaintiff,

6 vs.

7 BRIAN N. LINES, et al.,

8 Defendants.
-----X

9
10 VOLUME III

11 VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO

12 200 South Biscayne Boulevard

13 Suite 3900

14 Miami, Florida

15
16 Wednesday, December 16, 2009

17 8:12 a.m.

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22
23 Job No.: 169838

24 Pages 305-567, Volume 3

25 Reported By:

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 A P P E A R A N C E S

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VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
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1 Also Present: David Marcus
 2 Scott Quinn, Videographer
 3
 4

5 I N D E X

	WITNESS	Direct	Cross	Redirect	Recross
7	James M. Cangiano				
8	By Mr. Figel	309		497	
9	By Mr. Chretien		441		561
10	By Mr. Aieta		462		
11	By Mr. Nortman		469		533
12	By Mr. Smith		484		543

13
 14

15 E X H I B I T I N D E X

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1 THE VIDEOGRAPHER: We're back on the
2 record. Today's date is December 16, 2009.
3 The time is 8:12 a.m. This is a continuation
4 of deposition of James Cangiano.

5 You may continue, please.

6 THEREUPON:

7 JAMES M. CANGIANO,
8 was called as a witness and, being first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION (Continuing)

11 BY MR. FIGEL:

12 Q. Good morning, Mr. Cangiano.

13 A. Good morning.

14 Q. Welcome back.

15 A. Thank you.

16 Q. When we were -- when we broke
17 yesterday, we were talking about some of the
18 trading that you observed in your report. I
19 would like to direct your attention back to page
20 22 of your report. Do you have that in front of
21 you?

22 A. Certainly.

23 Q. On the third paragraph from the bottom
24 of page 22, you're talking about what you refer
25 to as the dump portion of a pump and dump.

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
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1 A. I believe the press releases that I did
2 not review and that she did related to SHEP.

3 MR. NORTMAN: Thank you.

4 MR. CHRETIEN: I'm going to pass the
5 witness subject to redirect on my part if any
6 of new matters come up during the examination
7 by you folks.

8 MR. AIETA: Shall I go ahead?

9 MR. FIGEL: Sure.

10 CROSS-EXAMINATION

11 BY MR. AIETA:

12 Q. Good afternoon, Mr. Cangiano. My name
13 is Mario Aieta from Satterlee Stephens Burke &
14 Burke, and I'm representing defendant Wayne Wew.
15 I just have a couple of questions for you.

16 You testified during the course of your
17 deposition yesterday and today that you did not
18 do any investigation of your own in connection
19 with your opinion, correct?

20 A. That's correct. Other than, as I
21 mentioned before, independent research on various
22 websites, such as SEC.gov, FINRA.com -- dot org,
23 I guess. I'm sorry. But no, I primarily relied
24 on the SEC documents.

25 Q. Okay. And the independent research

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 that you did, Mr. Cangiano, did any of that
2 relate to Wayne Wew?

3 A. It did not.

4 Q. Would it be fair to say, then, that
5 there is nothing in your expert report that you
6 claim is a fact about Wayne Wew that you
7 established on your own?

8 A. That's correct.

9 Q. Mr. Cangiano, do you know what a day
10 trader is?

11 A. I do.

12 Q. Would you tell me what a day trader is,
13 please.

14 A. A day trader is somebody who utilizes,
15 you know, advanced trading technology to trade
16 for his own account. Usually doesn't hold
17 positions overnight, but is in and out of stocks.

18 Q. And you would agree with me, would you
19 not, there is nothing illegal in being a day
20 trader, right?

21 A. No, not necessarily.

22 Q. Okay. You testified yesterday that --
23 concerning a market maker called Nite. Do you
24 remember that?

25 A. Yes.

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1 Q. You indicated that the bids that you
2 were reviewing placed by Nite were not being made
3 for the purpose of investment. Do you remember
4 that?

5 A. Yes.

6 Q. You said that Nite traded securities,
7 right?

8 A. That's correct.

9 Q. And as far as you -- it's not your
10 opinion that there is something inherently wrong
11 with that, is there?

12 A. That Nite trades securities?

13 Q. Right.

14 A. No.

15 Q. And you would agree with me there is
16 nothing inherently wrong with somebody trading
17 securities who was not a long-term investor,
18 right?

19 A. That's correct.

20 Q. You also testified concerning trades
21 made by short sellers?

22 A. Yes.

23 Q. At one point you stated that short
24 sellers who were placing trades with respect to
25 Sedona may have known what was going on. Do you

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 remember that?

2 A. I think my testimony was I didn't know
3 whether there was short selling going on in
4 Sedona. I think that's what Mr. Figel asked.

5 Q. Okay. You -- in your opinion you rely
6 on the fact that there was some short selling as
7 an indicator of a pump and dump situation. Do
8 you remember that?

9 A. In the general background, yes.

10 Q. And I think you testified yesterday
11 that the presence of short sellers indicated to
12 you, and I'll quote, "that some savvy traders
13 knew what was going on." Do you remember saying
14 that yesterday?

15 A. Yes.

16 Q. And when you said "knew what was going
17 on," what did you mean?

18 A. I think my testimony was that these
19 short sellers make a living out of identifying
20 artificially inflated stocks and shorting them.

21 Q. Okay. Is that illegal?

22 A. No.

23 Q. Is there anything wrong with that, as
24 far as you can tell?

25 A. No, providing they comply with all the

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
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1 short sale regulations with respect to market
2 making and delivery of the securities.

3 Q. You would agree with me, would you not,
4 Mr. Cangiano, there is also nothing wrong with a
5 day trader who identifies activity in the stock
6 by Sedona and purchases that stock in order to
7 make some money on it, right?

8 A. Nothing wrong with that.

9 Q. Do you recall yesterday, early on in
10 the day, you were asked to explain under what
11 circumstances raising a bid one time might
12 constitute manipulation of the stock? Do you
13 remember that?

14 A. Yes.

15 Q. And do you remember testifying that
16 raising a bid one time might constitute
17 manipulating the price of a stock if it was done
18 for the purposes of artificially influencing the
19 market? Do you remember that?

20 A. Yes.

21 Q. Okay. And if raising a bid was not
22 done for the purpose of artificially influencing
23 the market, would it be manipulation?

24 A. If there was no manipulative intent
25 involved and in a standalone context, probably

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 not.

2 Q. You would agree with me, then, that it
3 was the trader's intent that determined whether
4 or not raising a bid is manipulative?

5 A. Yeah, trader's intent combined with the
6 other facts surrounding that particular bid.

7 Q. Well, would those other facts have to
8 be facts known to the trader who was placing that
9 particular bid?

10 A. I would say if he knew of the
11 circumstances that he was participating in a pump
12 and dump scheme and preconditioning a market, I
13 would say that's a no-no. But if he was just
14 putting in a bid independent of that, that's
15 fine.

16 Q. All right. Now, let me break that
17 down. When you say known of the circumstances,
18 if he knew of the circumstances. Are you trying
19 to say that if he knows of the circumstances but
20 is not participating in some sort of scheme,
21 that's still a no-no, as you said?

22 A. No. What I'm saying is if he's not
23 participating in a scheme and raises the bid, I
24 don't see any issue with that.

25 Q. Okay. Even if he knows of the

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
CONDUCTED ON WEDNESDAY, DECEMBER 16, 2009

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1 circumstances, for example, like the short
2 sellers, that's not a problem, right?

3 A. That's right.

4 Q. And to participate in the scheme, would
5 you agree with me that the person placing the bid
6 would have to have reached some sort of overt
7 agreement with somebody else?

8 A. I think what I say in my report is that
9 what I call preconditioning of the market
10 sometimes has that kind of activity, such as wash
11 trades, matched orders, et cetera, and that is a
12 prearrangement. I agree with you there.

13 Q. Absent a prearrangement, somebody
14 placing a bid on a stock could not be
15 manipulating the market, could he?

16 A. Again, not unless he was a participant
17 in the pump and dump scheme and did it with the
18 express intent of setting the opening price in
19 the market.

20 MR. AIETA: I don't have any other
21 questions.

22 THE WITNESS: Thank you.

23 MR. CHRETIEN: Who's up?

24
25

VIDEOTAPED DEPOSITION OF JAMES M. CANGIANO - VOLUME 3
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1 MR. CHRETIEN: Thank you. Any further
2 questions?

3 MR. NORTMAN: I just want to follow up
4 on the request I made about getting copies of
5 the drafts that were reviewed by the SEC
6 staff attorneys.

7 MR. CHRETIEN: I've got that written
8 down.

9 MR. NORTMAN: Okay. So you will let me
10 know.

11 MR. CHRETIEN: All right. I will.
12 That concludes the deposition.

13 THE VIDEOGRAPHER: This deposition is
14 concluded at 3:01.

15 (Whereupon, deposition concluded.)

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